Secdt. II-87—30,004—24-10-44.

Development (1945) Department.

MJ SERIES. Pamphlet

G.O. No. 2584

Dated 3-7-45

[Despatch Abstract.

Sericulture — Govt. Silk Filatures, Kollegal — Construction of Seehair — Advance of Rs 3,500/- paid to Messrs. B.X. Furtado & Sons, Bangalore — Recovery — Institution of Civil Suit — Sanction

-24616D/45

No.1497-D/43 Office of the Director of Industries and Commerce, Madras, dated 17th April 1945.

SPECIAL UNDER SECRETARY TO GOVERNMENT DEVELOPMENT DEPARTMENT

From A. Khaleeli Esq.,I.C.S., Director of Industries & Commerce, Madras. To the Secretary to Government, Development Department.

Sir,

Sub:- Government Silk Filatures, Kollegal - Construction of a sechoir - Recovery of the advance paid from the defaulting firm.

Ref:- My letters No.1497-D/43, dated 17-1-45 and 19-2-45.

In continuation of my letters cited above, I have to inform you that I have not yet received the plaint for my signature, as promised by the Government Pleader and Public Prosecutor, Bangalore, in his letter dated 1-2-45, a copy of which has already been submitted to Government with my letter dated 19-2-45 cited above, in spite of my two reminders dated 6-3-45 and 27-3-45.

In the circumstances, I request that Government themselves may take up the matter as already suggested by me in my letter dated 17-1-45, with the Resident.

for Director of Industries & Commerce.

Dev. Dept 3

Pl. vww

Memo. no. 24616 D/45-2d 2.5.45

Sub: Industries- Sericulture- Govt. Silk Filatures, Kollegal- Construction of Sechoir- Recovery of advance paid, from defaulting firm.

Ref: From the D. I & C, no. 1497 D/43 d 27.4.45

The D. I & C. is requested to state whether, ~~some valid other than the Public Prosecutor, Bangalore may not be engaged, to institute the necessary legal proceedings against the defaulting firm, on behalf of the Govt.~~

essential

it is ~~absolutely necessary~~ that the Public Prosecutor Bangalore C & M Stns, should be engaged in this case, and why he should not engage any other advocate to institute the legal proceedings against the firm for the recovery of the advance.

Secy's queries at p 3 n/s

To the D. I & C.

R 22.5.45

C.F. 32 (a).

In reply, please quote number, date and short title.

Industries & Commerce DEPARTMENT.

Received ____ Registered ____

29660 D/45

From (Name) A. Khaleeli, Esq., I.F.S.,

(Designation) Director of Industries & Commerce,

Post Box 432, (Station) Chepauk, Madras.

Telegraphic Address ____

To

The Secretary to Government,
Development Department,
Madras.

No. 1497-D/43, *dated* 11th May, 1945.

Sir,

Enclosures ____

Spare Copies 3 above

Sub: Industries - Sericulture - Government Silk Filature, Kollegal sericulture Construction of a section - Recovery of advance paid from the defaulting firm.

Ref: Government Memorandum No.24616-D/45-2 dated 2-5-45.

It is usual to entrust Government cases to Government Pleaders. The Government Solicitor, Madras was consulted to ascertain the court in which proceedings were to be instituted and the law officer to whom the case was to be entrusted in this instance. On his advice, the Collector of the Civil & Military Station, Bangalore was addressed and in reply I was informed by the Secretary to the Hon'ble the Resident, that the case may be entrusted to Khan Sahib Md. Hanief, B.A.B.L. Government Pleader and Public Prosecutor, Bangalore. Accordingly he was furnished

A

M'or p 19 (R)

p.t.o....

6-

with the details of the case.

In view of the unsatisfactory way in which the Public Prosecutor, Bangalore is attending to this matter, it is perhaps best to entrust the work to another advocate. I shall select a competent advocate, settle terms with him and report matters to Government.

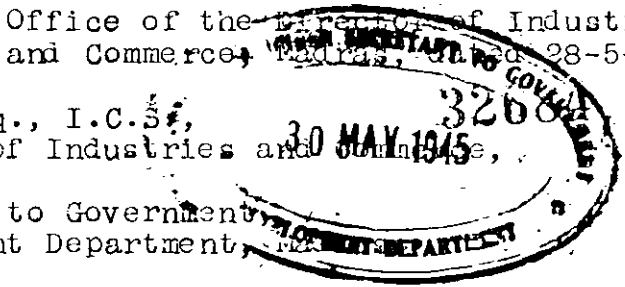
for Director of Industries & Commerce.

C/G-15/5.

No.1497-D/43. Office of the Director of Industries and Commerce, Madras, dated 28-5-45.

From

A.Khaleeli Esq., I.C.S.,
Director of Industries and Commerce,



To

The Secretary to Government,
Development Department,

Sir,

Sub: Industries - Sericulture - Government Silk Filature, Kollegal - Construction of sechoir- Recovery of advance paid from defaulting firm.

Ref: My letter of even number dated 11-5-45.

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In continuation of my letter cited above, I beg to state that I have received the plaint for verification and signature from Khan Saheb Md.Hanief, B.A., B.L., Government Pleader and Public Prosecutor, Bangalore with his letter dated 23-5-1945. Copies of his letter and the plaint are herewith enclosed for information of the Government. The plaint needs correction in respect of plaintiff's x name

as "The Province of Madras", and it will be duly corrected.

In this connection, I request Government to authorise me to sign the plaint on behalf of "The Province of Madras" in token of verification of its contents under Rule 1 of Order 27 of the 1st schedule to the Civil Procedure Code.

Director of Industries and Commerce.

G.M.28.5.

Copy/ of letter dated 23-5-45 from Mr.Md.Hanief Govt.Pleader and Public Prosecutor, Bangalore.

I hesitated to recommend the filing of the suit here because of the possibility you have of filing it in Bombay where one of the partners appears to be residing. However to avoid technical difficulties that might probably arise in the course of proceedings in Bombay, if instituted, I have prepared the plaint and am sending it with my vakalat enclosed in this letter for your signature and return along with a sum of Rs.260/- for stamps for the filing of the suit.

May I request you to sign the plaint and the vakalat and send them on to me for purposes of filing the suit. I do not know whether you are authorised to sign the plaint and vakalat on behalf of the Secretary of State for India.

I am sorry for the delay.

I do not know the names of the partners of the firm.

10

I have however presumed the two persons named in the correspondence, to be the partners of the firm. I do not know whether they are the partners. Nor do I know whether they are the only partners of the firm. May I request you to kindly make enquiries and give me the names of all the partners for a decree will have to be obtained against all the partners.

2

mdc
29/5

(copy)

IN THE COURT OF THE SUBORDINATE JUDGE, BANGALORE.

Original Suit No. of 1945-46.

The Province of Madras PLAINTIFF.

Messrs:B.X.Furtado and Sons, by partners (1) Mr.H.De Brito, (2) Mr.Periera, Bangalore City. DEFENDANTS.

UNDER ORDER VII RULE 1 C.P.C, the plaintiff above-named states as follows:-

1. That the address of the plaintiff and the defendants for purposes of notice etc. is as given above.

2. That an order for the manufacture and supply of a completed Sechoir as per specification and terms of the said order to the Government Silk Filature, Kollegal within 15-9-1943, was placed with the defendants' firm by the Director of Industries, Madras in Bangalore City orally and the same order was confirmed by the Director of Industries in his letter to the defendant firm No.1497-D/43 dated 5-8-43. The letter is filed herewith and is marked with the letter "A". The plaintiff prays that it may be read as part of the plaint.

3. That the defendant firm accepted the order by their letter dated 12-8-1943 and undertook to manufacture and supply the Secnoir as per the terms and specifications of the aforesaid order. The letter is herewith filed and is marked with the letter "B". The Plaintiff prays that it may be read as part of the plaint.

4. That in pursuance of the terms and conditions of the order and acceptance the plaintiff paid Rs.3500/- to the defendant firm by way of advance being 25% of the value of the Sechoir.

5. That the defendant firm in spite of several demands failed to supply the sechoir and the order was ultimately cancelled by the Director of Industries by his letter No.1497-D/43 dated 19-4-44.

6. That the plaintiff made a demand after cancelling the order for the refund of Rs.3500 paid to the defendant by the plaintiff by way of advance and the defendants by their letter dated 28-5-44 and 7-8-44 promised to refund the amount received by them by way of advance. The letters are filed herewith and are marked with the letters "C"and "D". The plaintiff prays that they may be read as part of the plaint.

7. That the defendants have failed to refund the sum of Rs.3500 advanced to them by the plaintiff in spite of demands. Hence this suit.

8. That the cause of action accrued to the plaintiff in Bangalore City on or about 5-8-43 when the order was placed and about when the advance of Rs.3500/- was made and on or about 19-4-44 when the order was cancelled within the jurisdiction of this Hon'ble Court.

9. That the value of the subject-matter of this suit for purposes of court-fee and jurisdiction is Rs.3500/- and stamp of the value of Rs.256-4-0 is produced herewith.

10. The plaintiff prays for a decree for Rs.3500/- interest at 6% from the date of suit till the date of realization and costs and such other reliefs as to the Court seem fit.

Madras.
D/

PLAINTIFF.

What is stated above is true to the best of my knowledge and belief, signed in Madras.

Madras.
D/

PLAINTIFF.

13

C.F. 32.

37130 D/45

Industries & Commerce Department

From (Name) A. Khalkali Esq., I.C.S.,

Designation Director of Industries and Commerce,

Station Chepauk, Madras,

Received on 22 JUN 1945 Registered

To

The Secretary to Government,

Development Department,

Madras.

Enclosures:

No. 1497-D/43 dated 18th June 1945.

Sir,

Sub: Industries - Sericulture - Government silk filature-Kollegal - construction of section - recovery of advance paid from the defaulting firm.

I invite a kind reference to my letter No. 1497-D/43, dated

dated 28th May 1945 on the above subject and request that Government may be pleased to issue early orders in the matter.

for Director of Industries and Commerce.

MLM/19.6

D.C. Dept

J. R.S.

No interim reply to the D. I & C. is perhaps necessary, as orders in this case are expected to issue shortly

(Missed approval, this was submitted along with the draft order) al 11/15-16/6

29/4/47 Issue + Docket

15

Dev. Dept. (D)

C.F. 17.

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ..		
When copied ..		
When examined..		
When signed ..		
When despatched		

SUBJECT:—

Suits - Govt. Silk Filatures, Kollegal - Construction of Sechoir - Advance ~~for~~ Rs. 3,500/- paid to Messrs. B.X. Furtado and Sons, Bangalore, - Recovery - Institution of Civil Suit - Sanctioned.

P34(H)

READ AGAIN G.O. No. 2245 Ms. Devt. d. 22.7.43. dated ..... 19....

,, ,, ,, ,, 19....

READ *ALSO*:—

M7-84 No. ..... From the D. I. & C. No.1497 D No./45, dated 28.5.~~19~~.45.

,, ,, ,, ,, ,, 19....

,, ,, ,, ,, ,, 19....

Order Ms. Resolution Rout. No. 2584, dated 3 — 9 — 19~~45~~....

Sanction is accorded to the institution of legal proceedings against Messrs. ~~B.~~ B.X. Furtado and Sons, Bangalore for the recovery of the advance of Rs. 3,500/- (Rupees three thousand and five hundred) only, paid to them, in pursuance of the orders issued in the G.O.

P34(H)

M7-84 P54(R)

16

G.O. cited.

✓ p 3 of (H)

2. The D.I. & C. is already empowered to sign the plaint and verify the pleadings, with refce. to the circular orders of the High Court, contained in the Civil Rules of Practice, Volume I. No specific orders are therefore necessary in the case under reference. [He is requested to give the Govt. Pleader and Public Prosecutor, Bangalore full and complete information regarding the partners of the firm and other matters ~~for the proper conduct of the suit.~~]

wd M'm p 8 of item 13 Lit at 7 of Book put up

2 'm p 10 of

~~For the proper conduct of the suit,~~ any connected with that suit.

25/6/45 ~~A.G.~~ D.I. & C.

25/6/45

He is requested to furnish the G.P & P.P., Bangalore with ~~full~~ all information and assistance as and when required with regard to the proper conduct of the suit.

26/6/45

26/6/45

6.7.45

To the D.I. & C.
.. .. A.G. thro Fin. Dept.
Copy to G.F.

Dev. Dept

Sub: Industries – Sericulture – Govt. Silk Filatures, Kollegal. Construction of Sechoir – Recovery of advance from the defaulting firm – Institution of legal proceedings

c 24616 D/45 p1 cf Ref: From the D: I & C, no. 1497 D/43 d. 17.4.45.

To Addl. 2.S.

In G.O. no. 1563 (HS) Dev. d 22.7.43, the Govt. sanctioned the Construction of a sechoir (for drying Cocoons) in the Govt. Silk Filatures, Kollegal at a cost of Rs 16,000/- and permitted the D. I & C to grant an advance of Rs 3,500/- to Messrs. B.K. Jairtadi & Sons, Bangalore who undertook to carry out the Constructions. The firm was unable to execute the order and therefore the D. I & C. cancelled the order placed with the firm. The Govt. instructed the D. I & C. to institute legal proceedings against the defaulting firm to recover the advance paid to it. The D. I & C. furnished the details of the case, in Dec '44 accordingly, to the Govt. Pleader and Public Prosecutor, Bangalore on the advice of the Resident in Mysore. Though the Govt. Pleader had promised on 1-2-45 to send the plaint for the D. I & C's signature to initiate a Civil suit against the firm in Bangalore, the D. I & C. has not yet received the plaint.

The D. I & C. now suggests that the Govt. in Mysore to may take up the matter with the Resident/and see that the Govt. Pleader and Public Prosecutor, Bangalore takes early steps to file the suit against the firm. It is doubtful whether it is open to the Govt. to request the Resident to brief ~~suggestion of the D. I & C. can be accepted and~~

'M' m p7 nf (R) Lodged 4985 4D/44 24-2-45

'M' m pp 13-14 cf (R)

pp 19-20 cf (R)

'Z' m p 30 cf (R)

p1 cf

'M' m p1 cf

+'M' m p21 cf (R)

& 'Z' m p11 nf (R)

~~the Resident requested to bring~~ the Govt. Pleader on behalf of the Govt. It would seem that the Govt. are only in the position of a private party and should make their own arrangements for instituting the necessary legal proceedings against the firm. The case may be sent to Legal for advice. Legal may kindly advise.

Sir pl rpt

22/4/45 Asd 23.4.45

Evans / Legal

2487

Dw n.o 24616 D/45-1 25.4.45

Legal Dept

LEGAL DEPARTMENT.

ASSISTANT SECRETARY 26 APR 1945 LEGAL DEPARTMENT

I do not think that there is any legal point involved in this case. The Government wish to institute legal proceedings against a firm in Bangalore for breach of contract and for the return of an advance made in pursuance of the contract. The question whether the assistance of the Resident in Mysore should be sought in instituting the proceedings involves only a question of propriety. There is nothing intrinsically wrong in even a private person residing in British India seeking the assistance of the British Resident in an Indian State in the matter of legal proceedings contemplated against a person residing in that State. Whether the Resident would be disposed to assist in the matter depends on the importance of the proceedings contemplated and any unusual difficulty which may exist in proceeding in the ordinary way.

M

Rec 26/4/45

Dw

To Addl. S.

Dw Dept

Legal n.o 24616 D/45-1

26 APR 1945 26521 D/45 DEVELOPMENT DEPARTMENT

For orders whether the Resident need be addressed by the Govt as desired by the D.S.C. or whether reference to 'M' above it will be considered that the matter is not of such importance as to justify approaching the Legal to the Dte to be arranged in any other

Sir pl rpt

~~Accounts~~ convenient manner to ensure speedy recovery of the advance from the Govt. It is a matter for the D.C. to decide whether securing the help of a Govt. Servant.

29/4/45

Vide 30/4/45. Please see 'M' & 'Z' on Pp 29 & 30 of xxxx of (R).

This is the question of a Govt. suit in which recovery of Govt. money is involved. As there is no impropriety involved, if there would seem to be a strong case for addressing the Resident. The D.C. is helpless in the matter without Govt. support, and the a Govt. Pleader and P.P. under another Govt. has no right to plead. ~~A private suit like this is one where~~ ~~exceptionally it is the Govt. decides~~ ~~to be guided into action with possible~~ ~~misunderstanding this is Govt. is absolutely~~ justified in ~~refusing~~ what it ~~considers~~ to be for the protection of its ~~pecuniary~~ interests. For orders.

30/4/45

Is it absolutely necessary that the P.P. (Bayfield) should be employed in this case? May I not direct the D.C. to employ some other Counsel?

8/5/45

To Addl. A.S.

With reference to Secy's queries overleaf, a draft memo to the D.I.& C. is submitted below for approval

Mr 1/5/45 DW 2/5/45

[Issued as Memo 24-61-6-D/45-2-d 2.5.45] ... pp 3-4 cf

[From the D.I.& C, no. 149-T.D/43 d 11.5.45] ... pp 5-6 cf

To Addl. A.S.

Please see the memo issued to the D.I.& C. at pp 3-4 cf and his reply at pp 5-6 cf. With reference to 'A' on p 6 cf, the ~~reply~~ report promised may be awaited till 20.6.45

Mr 19/5/45 SVC 25/5/45

[From the D.I.& C, no. 149-T.E/43 d 28.5.45] ... pp 7-8 cf

To Addl. A.S.

Please see the D.I.& C's letter at pp 7-8 cf. With reference to 'M' on p 8 cf, it is submitted that the D.I.& C. is already on the list of officers authorised to sign and to verify all pleadings in suits by or against the Govt. - vide list at p 7 of the Civil Rules of Practice and Circular orders, Vol I. The D.I.& C. may therefore be told accordingly. ~~Subject to orders, a draft memo to the D.I.& C. is submitted below for approval. It may issue after perusal by Legal.~~ The misdirection of the suit by the D.I.& C. would however appear to deprive the Govt of the benefit of Govt to enable him to incur the ~~cost~~ law charges connected therewith. Sanction may be accorded for this purpose. - Vide item 33 'Law charges' on p 81 of M. & C. Vol II.

* Book p. 1 cf

A

As regards I on p 10 cf, the D.I.& C. should furnish complete particulars of the parties to be impleaded with and the suit may be withdrawn on this point, while orders issue with

The Dept & Legal Dept may see the case for remarks before order issue by the D.Sec

Sd/ 7.6.45 Finance

Sd/ 7.6.45 Legal.

Dev No. 24616D/45-3 7.6.45

Fin (Accts B)

Please see the finl. note on pages 3-4 NF and orders in circulation on p 9 NF of the bodies papers at (R). The proposal of Devt at A on p. 4 above may be accepted.

Sd/ 11.6.45

Sd/ 14.6.45 Legal

Sd/ 14.6.45

ASSISTANT SECRETARY TO GOVERNMENT 8 JUN 1945 FINANCE DEPARTMENT

Accts B 28232 Accts B.

Theo Pen

Fin. U.O. 28232-Accts-B 15.6.45

The Secretary Legal 3541

2 forwarded for necessary action 13.6.45 - C.IV

15-6-45 Legal U.O. 03541-1 20.6.45

37356D/45

ASSISTANT SECRETARY 16 JUN 1945 LEGAL DEPARTMENT.

LEGAL DEPARTMENT.

Seen in Legal: The position is as stated in the note of the Development department on the previous page.

Sd/ 15/6/45 S.

Sd/ 20.6.45 Devt. Dev Dept

Jo U.S.

The proposal in this case is to institute a suit against Messrs: B.X. Furtado & Sons, Bangalore for recovery of the advance of Rs 3,500/- paid to them against a contract for the construction of a shed for the Govt. Silk Filatures, Kollegal.

In G.O. No. 1563 (MS) Dev'd 22.7.43, the Govt. Sanctioned the construction of a shed for drying Cocoons

UNDER SECRETARY 21 JUN 1945 DEVELOPMENT DEPARTMENT

p 15 of (I)

in the Govt. Silk Filatures, Kollegal at a cost not exceeding Rs 16,000/-

On the recommendation of the D.D.& C, the Govt. permitted the D.D.& C. to pay an advance of Rs 3,500/= to Messrs. B.X. Furtado & Sons, Bangalore who undertook to carry out the construction of the Sechoir. In spite of the payment of the advance, the firm did not submit the plans and estimate for the construction even after ten months' waiting. The D.D.& C. had therefore to cancel the contract in April 44. He thereafter suggested that the advance paid to the firm might be recovered from the salary of Mr. Peychaud, the General Manager, Govt. Silk Filatures, Kollegal who ~~was responsible for the payment of the advance~~ paid the advance to the firm by cheque. The Govt did not consider the suggestion proper, as Mr. Peychaud should be deemed to have acted in good faith and ~~that~~ ordered that the amount should be recovered from the defaulting firm. The D.D.& C. accordingly consulted the Govt. Solicitor and Public Prosecutor at Bangalore, ~~to institute a Civil suit against the firm and are~~ who after discussion with the Resident, Mysore for the matter being considered by the

The Govt Pleader and Public Prosecutor, Bangalore has submitted a draft plaint to be filed in the Court of the Subordinate Judge, Bangalore and The D.D.& C. has forwarded it with the request that he may be authorised to sign the plaint on behalf of the Govt. This does not appear necessary as he is in the list of persons authorised to sign and verify all pleadings in suits by or against the Govt., according to the list at p 7 of the Civil Rules of Practice and Circular orders, Vol I. The institution of the suit has now to be sanctioned by the Govt. for the reasons noted at pp 4 ante. The Finance & Legal Depts. agree to the proposal. A draft order is submitted below for approval.

The draft orders may be approved.

23/6/45

L.S. May 1945.

Issued as G.O. 2584 (MS) Dev'd 3.7.45